No. 06-13

Supreme Court, U.S.
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In The
Supreme Court of the United States

WENDELL PIKE,

Petitioner,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Should the Court grant certiorari to review whether Petitioner's claim was properly dismissed where there is no compelling reason to review Petitioner's claim, where no federal question is at issue and where a merits determination would involve the interpretation of a Kentucky automobile insurance policy under the statutory scheme and case law of the Commonwealth of Kentucky?

2. Should the Court grant certiorari to review whether the Sixth Circuit correctly determined that, under Kentucky law, Petitioner's claim was barred by the time limitations for filing a claim set forth in the automobile insurance policy issued by Respondent?

RULE 29.6 STATEMENT

GEICO Corporation is the parent company of Respondent Government Employees Insurance Company. GEICO Corporation is an indirect wholly-owned subsidiary of Berkshire Hathaway, Inc.

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BRIEF OF RESPONDENT IN OPPOSITION

Respondent, Government Employees Insurance Company, requests that the Court deny the petition for a writ of certiorari seeking review of the decision of the United States Court of Appeals for the Sixth Circuit in this case.

INTRODUCTION/COUNTER STATEMENT

Defendant/Respondent, Government Employees Insurance Company ("GEICO"), issued an automobile insurance policy in the Commonwealth of Kentucky to Plaintiff/Petitioner Wendell Pike ("Pike"), a Kentucky citizen. The insurance policy required the insured to file a claim for underinsured motorist benefits ("UIM") "within the period prescribed by Kentucky law for the filing of a personal injury action arising out of a motor vehicle accident." That time limitation, established by the Kentucky legislature, is either within two years of the date of the accident or within two years of the date of the last reparation ("PIP") payment, whichever is later. K.R S. 304.39-230(6).

Pike was involved in a motor vehicle accident on November 21, 2000. Because he was in the course and scope of his employment at the time of the accident, a worker's compensation insurer paid all of his medical bills. Pike did not receive any reparation payment. On May 21, 2003, two and one-half years after the accident, Pike first notified GEICO that he had been involved in the accident and had sustained injuries as a result. Pike filed a lawsuit against GEICO in Kentucky state court on February 5, 2004 seeking UIM benefits. The filing occurred thirty-eight months after the accident and more than one year

after the expiration of the limitations period provided in the insurance policy.

GEICO filed a Motion to Dismiss in which it raised a variety of issues including Pike's violation of the policy's limitations period. At the same time, GEICO removed the case to the United States District Court for the Western District of Kentucky. Following its discussion of Kentucky statutes and pertinent cases, the District Court correctly dismissed the Complaint, finding that the suit was not filed within the insurance policy's time limitations for filing such a claim.

On appeal to the United States Court of Appeals for the Sixth Circuit, Pike raised several issues. In a concise and well-reasoned opinion, which included a thorough survey of pertinent Kentucky law, the Court affirmed the District Court's dismissal. In doing so, the Court held that the time limitation in GEICO's policy was reasonable and that Pike simply failed to timely file his suit within the time prescribed.

In a final attempt to revive his claim, Petitioner seeks review from the highest Court of the land. Because the issues presented are not worthy of review and because the controversy was correctly decided below, the writ should be denied.

ARGUMENTS FOR DENYING THE WRIT

I. THE ISSUES IN THIS CASE DO NOT INVOLVE AN IMPORTANT FEDERAL QUESTION, AS ONLY THE INTERPRETATION OF A KENTUCKY INSURANCE POLICY UNDER APPLICABLE KENTUCKY LAW IS INVOLVED AND THERE IS NO COMPELLING REASON TO REVIEW PETITIONER'S CLAIM.

A. There is no compelling reason to grant the writ.

As Justice Harlan stated nearly 50 years ago while delivering the Benjamin N. Cardozo lecture to the New York City Bar Association, "a great many petitions for certiorari reflect a fundamental misconception as to the role of the Supreme Court." Justice Harlan, *Manning the Dikes,* 13 Record of the N.Y.C. Bar Ass'n. 541, 549 (1958). A review of Petitioner's Questions Presented in this case attests to the accuracy of Justice Harlan's comment. Each question involves issues related to insurance policies issued in Kentucky or to the interpretation of Kentucky law. For example, Petitioner seeks a review of the "appropriate period of limitations in Kentucky," the "period of limitations [that] is reasonable under Kentucky law," and whether, under Kentucky law, payment of an insured's medical expenses by a worker's compensation carrier tolls the limitations period. Pet. i. None of the questions presented by Petitioner remotely relates to a federal question.

Supreme Court Rule 10[1] provides practitioners with a road map for what makes a case certworthy. Understanding

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[1] Supreme Court Rule 10 provides as follows:

Rule 10. Considerations Governing Review on Certiorari

(Continued on following page)

that the grant or denial of a petition for a writ of certiorari is within the discretion of the Court and recognizing that the considerations governing review set forth in Rule 10 are "neither controlling nor fully measur[e] the Court's discretion," the Rule provides that a petition "will be granted only for compelling reasons." There are no compelling reasons here.

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States Court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with a decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

First, a decision by this Court on the merits would affect only a small segment of the citizenry. Indeed, such a decision would have no impact on United States citizens outside of Kentucky and would impact only those Kentucky residents who are insured with GEICO under a policy which contains the identical time limitation provision and who are claiming UIM benefits. "The Court has traditionally expended its limited time and resources on those cases that present issues of national importance. . . ." Robert L. Stern, *et al.*, *Supreme Court Practice* § 4.2 at 223 (8th ed. 2002). This case has a fatally limited scope of local, not national, importance. Given the Court's limited resources and the limited number of cases it accepts, this case is certainly not one "for which there is some 'compelling' reason for invoking the Court's jurisdiction." *Id.* As the questions raised in the petition are of no obvious practical importance other than to the parties and, perhaps, a few other Kentucky citizens, this case does not rise to a level deserving of this Court's review

B. There is no federal question.

Chief Justice Rehnquist once wrote that for a case to be worthy of review by the Court, it should involve "unsettled questions of federal constitutional or statutory law of general interest." Chief Justice Rehnquist, *The Supreme Court – How It Was, How It Is* at 269 (1987). Rule 10 includes three subsections which generally describe the types of cases which ordinarily might be worthy of consideration by the Court. A review of those subsections reveals that the over-arching consideration governing whether a petition for a writ of certiorari should be granted is that the case involves "an important federal question." Sup. Ct. R. 10(a), (b) & (c).

It is telling, yet understandable, that Petitioner makes no mention of Rule 10 or to the general considerations contained in the Rule. Indeed, no federal constitutional issue is presented; no federal statute is at issue; there is no conflict among any of the United States courts of appeals or between any United States court of appeals and any state court of last resort concerning "unsettled questions of federal constitutional or statutory law of general interest." Rather, Petitioner requests that this Court review provisions of an insurance policy issued in Kentucky to a Kentucky citizen to determine whether the lower courts misapplied Kentucky statutory and case law in deciding that Petitioner's claim was barred by the limitations period set forth in the insurance policy.

Notably, Rule 10 was amended in 1995 to provide that "[a] petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law." Although the Court traditionally denied petitions based on erroneous facts or misapplication of the law, the amendment was added to emphasize the "likely futility" of premising a petition on such errors. Stern, *et al., supra* at 223. Despite Rule 10's admonishment, a primary focus of Petitioner's argument is that the lower courts "misapplied Kentucky law." Pet. 12. However, "[t]he Court does not sit simply to correct such errors." Stern, *et al., supra* at 223.

In sum, Petitioner has failed to demonstrate that any of the criteria which make a case worthy of review by the Court are met. There is no federal question, constitutional issue or federal statutory interpretation involved in this case. There is no conflict among the United States courts of appeals or any state court of last resort. This case has no general importance beyond the particular facts of the

case, and while the case is obviously important to the parties, a merits determination by this Court would have significance only to other similarly situated GEICO insured Kentuckians who have a claim for UIM benefits. Petitioner has presented no compelling reason for this Court to grant the petition for a writ of certiorari. Accordingly, Respondent respectfully requests that the writ be denied.

II. THE SIXTH CIRCUIT CORRECTLY DECIDED UNDER KENTUCKY LAW THAT PETITIONER'S CLAIM FOR UNDERINSURED MOTORIST BENEFITS WAS BARRED BY HIS FAILURE TO FILE HIS COMPLAINT WITHIN THE TIME LIMITATIONS SET FORTH IN THE GEICO INSURANCE POLICY.

Despite the fact that Petitioner has presented five questions for review, the sole question decided below was whether GEICO's time limitation for filing a UIM claim was reasonable under Kentucky law. The Sixth Circuit correctly decided that the policy limitation was reasonable and valid and that Petitioner's claim was not timely.

Petitioner, both in the courts below and in this Court, relies upon a trilogy of cases[2] in his effort to spare his case from dismissal. Those cases were fully briefed below and the lower courts thoroughly considered them in concluding that Petitioner's claim was barred as untimely. The Sixth Circuit's opinion from which Petitioner seeks review

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[2] *Brown v. State Auto Prop. & Cas. Ins. Co.*, 189 F. Supp.2d 665 (W.D. Ky. 2001); *Elkins v. Kentucky Farm Bureau Mut. Ins. Co.*, 844 S.W.2d 423 (Ky. Ct. App. 1992); *Gordon v. Kentucky Farm Bureau Ins. Co.*, 914 S.W.2d 331 (Ky.1995).

presents a concise, yet thorough analysis of the issues presented and the authority relied upon by Petitioner. Rather than adding unnecessary length to this brief by repeating the lower court's analysis, the Court is commended to a review of the Sixth Circuit's opinion found in Petitioner's Appendix. Respondent is unable to articulate more clearly the rationale for affirming dismissal (and for denying the writ) than was stated by the Sixth Circuit. Thus, no more need be said about the merits of Petitioner's Argument.

CONCLUSION

Because the petition fails to satisfy any criteria for justifying review by this Court and because the case was correctly decided below, Respondent requests that the petition for a writ of certiorari be denied.

Respectfully submitted,

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